

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ORDER

AND NOW, this 29th day of Jan, 2008, after the plaintiff,

Mark Kavakich, filed a Fourth Amended Complaint, and after a Motion to Dismiss Fourth Amended Complaint was filed by defendant, Dennis M. Makel, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties the requisite amount of time to file written objections thereto, and upon consideration of the objections filed by plaintiff and the response to those objections filed by defendant, Dennis M. Makel, and after independent review of the record, and upon consideration of the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS HEREBY ORDERED that the Motion to Dismiss Fourth Amended Complaint (Docket No. 86) filed by Dennis M. Makel is GRANTED. In considering whether to allow Plaintiff leave to file a fifth amended complaint as against Makel, this Court finds that granting such leave to amend would serve only to delay the case further, which, in effect, has

been stayed since its inception over 16 months ago due to various motions to dismiss, and would serve to prejudice the other Defendants, who are entitled to have the case proceed toward an adjudication on the merits at this point. Accordingly, leave to file a fifth amended complaint against Dennis M. Makel is DENIED.



GARY L. LANCASTER
United States District Judge

cc: Honorable Amy Reynolds Hay
United States Magistrate Judge

All counsel of record by Notice of Electronic Filing